

A STUDY ON RIGHT TO ABORTION WITH SPECIAL REFERENCE TO UNMARRIED WOMAN IN INDIA

Mr. P.Srinivas¹, Mr K. Santosh Kumar²

India through its traditional concept considers marriage and family as a recognized personal norm within the diversified society. Abortion not permitted in ancient times, and society was strongly opposed to it as fetus murder. Premarital-sex is cause of about the incidents of unmarried young women in India who seek to abort an unintended pregnancy is due to the lack of awareness of sexual education programs. The conservative setting is extremely stigmatized and unintended pregnancies are leading to always termination.

In ancient Hindu concepts of Gandharvavivaha means of varying degrees of acceptability of acquiring a bride and living together. Sensual infatuation drives the consummation of their relationship, which doesn't require parental or societal consent. It allowed premarital sexual courtship in Gandharvavivaha. The eminent scholars pointed out no indications of sexual relations to unregulated stigmas in Hindu society. The moral and values associated with the tradition states dharma and results of happiness and beatitude. Islam and Christianity religions resist premarital-sex relates to misogyny and an irrational fear of feminine sexual oppressions.

This article examines whether the right to obtain an abortion is rooted in the history and tradition of India. Woman who consents to premarital sex on false assurances of marriage is repulsive. Legal fiction towards such diminishing moral values leading unregulated pregnancies need an amendment of law and protection for unmarried women.

KEY WORDS: PRE-MARITAL ABORTION; UNREGULATED ABORTION;

INTRODUCTION

¹Sr.Assistant Professor (Select grade), MSS LAW College, Affiliated to Osmania University, Hyderabad

²Advocate & PT Lecturer, Practicing at High Court of Telangana.

Marriage was looked upon as a religious and social duty, while it was held that an unmarried person was not eligible to participate in Vedic sacrifices being compulsory for every girl. Abortion was not permitted in ancient times, and society was strongly opposed to it. Terminating a pregnancy was referred to as fetus murder in India. However, due to changes in time and technology, most nations now recognize this right as legal after the famous *Roe vs Wade* decision by the US Supreme Court in a 5-4 decision overturned the landmark ruling that established the constitutional right to abortion in the United States in 1973³. The question which is the cause for this debate will be whether a mother or unmarried woman has a right to abortion viz., the right to life of the unborn. What are the International instruments which sanction the right to abortion? What is the stand of Indian perspective? Being human and basic requirements are the necessity to every individual without any discrimination of any kind particularly the recognition of dignity of woman and of the equal and inalienable rights of all members of the human family becomes the foundation of the freedom. The stigma plays a significant around pregnancy in unmarried Indian women is deeply rooted in Indian social structure that if often becomes the ground of family disputes, and in extreme cases leading to suicide. The most significant umbrella and inalienable right from which no derogation is permitted is the right to life under Article 21 of the Constitution of India. The Article 6(1) of the International Covenant on Civil and Political Rights prohibit the arbitrary deprivation of life. One such issue is the question of Right to abortion. Globally, abortion services are annually accessed by an estimated 35 of 1000 women aged 15–44⁴ and upon a survey youth aged 15–24 in six states, 15% of men and 4% of women reported having had premarital sex exposed to risks of unintended pregnancy and abortion incidents⁵. In a study by Guttmacher, 24% of 500 unmarried adolescent abortion

³Dan Mangan, 'Supreme Court overturns Roe v. Wade, ending 50 years of federal abortion rights', CNBC Published Fri, Jun 24 2022 Available at <https://www.cnbc.com/2022/06/24/roe-v-wade-overturned-by-supreme-court-ending-federal-abortion-rights.html> Accessed on 22/07/2022.

⁴Sedgh G, Bearak J, Singh S, et al. Abortion incidence between 1990 and 2014: global, regional, and subregional levels and trends. *Lancet*. 2016;388(10041):258–267. doi:10.1016/S0140-6736(16)30380-4.

⁵Santhya KG et al., Pre-marital sexual relations among youth in India: findings from the Youth in India: Situation and Needs study, paper presented at the XXVI International Union for the Scientific Study of Population conference, Marrakech, Morocco, Sept. 27–Oct. 2, 2009.

seekers reported that their parents had taken punitive measures, including beating or starving them for prolonged periods⁶.

The United States in its recent rulings held that, The US Constitution does not confer a right to abortion as Roe and Casey are overruled and the authority to regulate abortion is returned to the people and their elected representatives⁷. It also raised critical question as whether the Constitution, properly understood, confers a right to obtain an abortion through analysis Roe solely on the basis of stare decisis and Casey on its plurality. It examines whether the right to obtain an abortion is rooted in the Nation's history and tradition and whether it is an essential component of "ordered liberty".

The UN Human Rights Commission's key task was to create a body of international human rights law based on The Universal Declaration of Human Rights 1948 and to establish the mechanisms needed to enforce its implementation and use. The Human Rights Commission produced two major documents: The International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR). Both became international law in 1976. Together with the Universal Declaration of Human Rights, these two covenants comprise what is known as the "International Bill of Human Rights."

According to the World Health Organization on Medical Management of Abortion 2018 for safe abortion framed guidelines through recommendations of the WHO Guidelines Review Committee with multidisciplinary approach. It contains the rationale for managing incomplete abortion⁸.

⁶ Ed., 'Abortion in Case of Unmarried Women in India - Everything That You Need To Know', The News Minutes, dated 09th June 2021. Available at <https://www.thenewsminute.com/article/abortion-case-unmarried-women-india-everything-you-need-know-152027> (Accessed on 25/07/2022).

⁷ DOBBS, STATE HEALTH OFFICER OF THE MISSISSIPPI DEPARTMENT OF HEALTH, ET AL. v. JACKSON WOMEN'S HEALTH ORGANIZATION ET AL., THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT, June 24, 2022. Available at https://www.supremecourt.gov/opinions/21pdf/19-1392_6j37.pdf (Accessed on 24/07/2022).

⁸ Medical management of abortion. Geneva: World Health Organization; 2018. Licence: CC BY-NC-SA 3.0 IGO. Available at <<https://apps.who.int/iris/bitstream/handle/10665/278968/9789241550406-eng.pdf> (Accessed on 24/07/2022).

THE CONCEPT OF THE ABORTION

Abortion in simpler terms is a procedure to terminate a pregnancy. Abortion means that the foetus or embryo is removed from the uterus. Initial abortion means that the foetus or embryo is removed before it reaches the age of viability. The heart rate in an embryo or foetus comes around 6 weeks. Removal of the foetus i.e. termination of pregnancy or abortion before 6 weeks is a simpler procedure⁹.

DEFINATION

According to The Wikipedia Dictionary defines an abortion, “Abortion is the termination of a pregnancy by removal or expulsion of an embryo or fetus¹⁰”

According to The National Center for Health Statistics defines an abortion, “[a] fetus or embryo removed or expelled from the uterus during the first half of gestation—20 weeks or less, or in the absence of accurate dating criteria, born weighing < 500 g¹¹.” It also defines birth as” the complete expulsion or extraction from the mother of a fetus after 20 weeks' gestation. [...] in the absence of accurate dating criteria, fetuses weighing <500 g are usually not considered births, but rather are termed abortuses for purposes of vital statistics.¹²”

According to Annas, George J, Et.al in ‘51. Legal and Ethical Issues in Obstetric Practice’, (2007); Gabbe, Steven G Et.al, ‘Obstetrics: Normal and Problem Pregnancies’, “abortion is termination of a pregnancy when the fetus is not viable¹³” (2020).

According to the Medical Termination of Pregnancy Act in India, 1971, India under the law provides ‘a right for abortion for valid reasons up to 20 weeks. Thereafter up to 24 weeks through special legal consent’¹⁴.

⁹Vardaan Hospital, New Delhi. <https://www.vardaan.net/abortion-procedure-in-india> (Accessed on 22/07/2022).

¹⁰<https://en.wikipedia.org/wiki/Abortion>

¹¹Cunningham, FG; Leveno, KJ; Bloom, SL; Hauth, JC; Rouse, DJ; Spong, CY, eds. (2010). "1. Overview of Obstetrics". Williams Obstetrics (23 ed.). McGraw-Hill Medical. ISBN 978-0-07-149701-5.

¹² Ibid.

¹³ 8th edition, Churchill Livingstone, 2020, 1280p 10-0323608701(ISBN).

¹⁴Supra note 2.

MEANING

Abortion can occur spontaneously as a miscarriage, or be artificially induced through chemical, surgical or other means. Commonly, "abortion" refers to an induced procedure at any point in the pregnancy; medically, it is defined as a miscarriage or induced termination before twenty weeks gestation, which is considered nonviable. Abortion is a common and essential component of sexual and reproductive health care, yet social norms and stigma influence women's decision-making and create barriers to safe abortion care¹⁵. Legally, abortion (miscarriage) means the premature expulsion of the foetus from the mother's womb at any time of pregnancy, before full term of pregnancy is completed¹⁶.

Abortion barriers include clinical and delivery recommendations, guidelines, policy, criminalization, waiting time, family or partner's approval etc., leads to critical delays in accessing treatments and puts woman and girls at greater risk of unsafe abortion, stigmatization, and health complications, as most countries permit abortions with specified circumstances, while 20 countries provide no legal ground for abortion¹⁷.

Duration of pregnancy (gestation): Size of the uterus, estimated in weeks, based on clinical examination, that corresponds to a pregnant uterus of the same gestational age dated by last menstrual period (LMP)

ETHICAL ISSUE OF UNINTENDED ABORTIONS

Biological relationships between man and women are the basis of family system in any community or society. The right to sexual choices varies and have 'privileged relationships' within Kinship which are to be premarital and extramarital being permitted. Abortion is severely condemned in Vedic, Upanishadic, the later puranic (old) and smriti literature. Paragraph 3 of the

¹⁵ Shelly Makleff et al., 'Exploring stigma and social norms in women's abortion experiences and their expectations of care': Sexual and Reproductive Health Matters; v27 (3): Taylor & Francis, 2019.

<https://doi.org/10.1080/26410397.2019.1661753>

¹⁶ Dr K. Narayan Reddy, 'Medical Jurisprudence and Toxicology (law practice and procedure)', 2006 (R); ALT Publications, Hyderabad.

¹⁷ 'WHO issues new guidelines on abortion to help countries deliver lifesaving care', WHO Departmental News, 9th March, 2022. Available at [https://www.who.int/news/item/09-03-2022-access-to-safe-abortion-critical-for-health-of-women-and-girls#:~:text=Alongside%20the%20clinical%20and%20service,family%20members\)%20or%20institutions%2C%20and](https://www.who.int/news/item/09-03-2022-access-to-safe-abortion-critical-for-health-of-women-and-girls#:~:text=Alongside%20the%20clinical%20and%20service,family%20members)%20or%20institutions%2C%20and) (Accessed on 24/07/2022)

Code of Ethics of the Medical Council of India says: I will maintain the utmost respect for human life from the time of conception. Gandharvavivaha and the associated premarital sex found qualified acceptance in Hinduism in ancient times. The eminent scholar P. V. Kane (History of Dharmasāstra, Volume 2, Part 1, pp. 427-431) points out that there is no indication that sexual relations were promiscuous or unregulated in ancient Hindu society. The Nāradasmr̥ti (12:72) points out that while consensual premarital sex in the gāndharva context is not an offense the concerned parties should honorably marry. Kane (History of Dharmasāstra, Volume 2, Part 1, p. 521) points out that a gāndharva liaison always had been solemnized with wedding rites. The Mahābhārata (Ādi Parva, 195:7) mandates the performance of wedding rites after a gāndharva liaison. In all literary references to gāndharvavivāha, the lovers are devoted to one another and their liaison culminates in marriage. Therefore, a qualified acceptance of gāndharvavivāha is not an endorsement of promiscuity¹⁸. Several Hindu texts deem gāndharvavivāha less desirable than some other forms of marriage. However, The Mahābhārata (Ādi Parva, Sambhava Parva, 73) and The Kāmasūtra (3:5-29-30) opine that gāndharvavivāha is the foremost of all forms of union. The Manusmr̥ti (3:21-26) refers to the various societal views of gāndharvavivāha. The Baudhāyana Dharmasūtra (1:11:10-11) says that gāndharvavivāha is based on love and freewill and hence suitable to all sections of society except the Brāhmaṇa. Dharmasāstras prescribe a restrictive lifestyle of penury and austerity to the Brāhmaṇa, who was not entitled to enjoy the same degree of freedom and indulgence granted the rest of society. Since gāndharvavivāha is based on love and freewill it would have been seen as sensual indulgence. Hence the Brāhmaṇa was not allowed it. The testimony from ancient Tamiḷ texts also confirms that Hinduism didn't condone promiscuity. The eminent scholar R. Nagaswamy points out (Mirror of Tamil and Sanskrit, pp. 76-78) that the ancient Tamiḷ grammar Tolkāppiyam refers to an older social custom called kaḷavu (i.e., stealthy union), which was characterized by promiscuity. Kaḷavu was practiced by the Tamiḷ tribes during the Neolithic Era before they embraced Hindu culture. The Tolkāppiyam informs us that the learned Ārya disapproved of this practice and introduced a newly formulated institution of marriage called kaṛpu, which is the Tamiḷ cognate of the Sanskrit word kalpita (i.e., newly formulated). Kaḷavu and kaṛpu are associated with promiscuity and chastity respectively. One is contrasted with the other. Kaṛpu is recognized as the lawful union.

¹⁸Kalavai Venkat, 'Hinduism and Premarital Sex', Swarajya, dated 9th Jan, 2019. Available at <https://swarajyamag.com/commentary/hinduism-and-premarital-sex> (Accessed on 24th June 2022)

The Moral Landscape: How Science Can Determine Human Values, the neuroscientist Sam Harris defines morality as that which maximizes collective happiness in the most reasonable, sustainable, and comprehensive manner. Harris' definition is consistent with the traditional Hindu view as enshrined in The Vaisesikasūtra, which reasonably defines dharma as "that from which results happiness and beatitude." Morality can be scientifically defined and measured as a function of evolutionary biology and neuroscience. A behavior is moral if it maximizes collective happiness and immoral if it diminishes it.

The reflection of the misogynistic Christianity and Islam are oppressive toward women and commoditize issues and violently denied. The Bible (Deuteronomy 22:13-21) requires a groom to drag his bride on the nuptial night to her father's doorstep and stone her to death on the suspicion that she may not be a virgin. The Jealous Prophet and His Heavenly Son, Islam treats women as commodities to be captured, ransomed, and traded. Ayan Hirsi Ali (The Caged Virgin – an Emancipation Proclamation for Women and Islam, pp. 15-16) points out that as a result of Islam's oppressive attitude toward the feminine, millions of young Muslim girls are genitally mutilated, infibulated, and denied the pleasures of sex forever. The preference for live-in relationship status how long they may be, avoiding marriage and embracing without any rights¹⁹ or obligations as observed by the Kerala High Court throws light on the cultural aspects impact the sanctity of the institution of the marriage in the society²⁰. The status of the Wife is termed in the judgement as 'Worry invited for ever'.

CONSTITUTIONAL PERSPECTIVE

The Wave of reformist thought in the nineteenth century initiated by Mr. Rammohan Roy (1774-1833), Ishwarchandra Vidyasagar (1820-1871) Dayananda Saraswathi (1837- 1833) others led in

¹⁹ Ed, 'Live in relationships, however long they may be, will not confer any right to raise matrimonial disputes: HC', The Hindu, dated Nov 3, 2021. <https://www.thehindu.com/news/national/tamil-nadu/live-in-relationships-however-long-they-may-be-will-not-confer-any-right-to-raise-matrimonial-disputes-hc/article37316402.ece> accessed on Sept 02, 2022.

²⁰ B. Abraham, 'For Youngsters, WIFE Is Worry Invited For Ever, Says Kerala HC On Rise In Live-in Relationships', The India Times, dated Sept 01, 2022. <https://www.indiatimes.com/news/india/kerala-high-court-live-in-relationship-wife-divorce-578630.html> accessed on Sept 02, 2022.

very significant legislation, social and educational changes. Finally Mahatma Gandhi and Indian National Movement led to the great emancipation of Indian women in the 20th century. The Supreme Court has said that the 'right to privacy' is implicit in Article 21 of the Constitution of India and a right to abortion can be read from this right. The choice for abortion is not 'equal' for all women in India; the unmarried ones bear the maximum burden²¹. According to Urmila (name changed), "I was 21 and unmarried when I conceived my first child. My partner was not ready for marriage yet, and I was not ready to abort my child. I had no means to sustain our (me and my baby) lives. My parents rushed me to the nearby doctor and wanted me to say that I wanted the abortion. I had no say in making probably what was the biggest decision of my life. I did not know what to do, who to approach. I wish I knew how to stand for myself²²". Indian law allows abortion, if the continuance of pregnancy would involve a risk to the life of the pregnant woman or grave injury to her physical or mental health. Not all pregnancies could be terminated. The choice for the unmarried women is not equal and has to face the maximum substance under The Medical Termination of Pregnancy Act (MTP), 1971 as a allowed medical abortion up to 9 weeks of pregnancy and surgical abortions up to 20 weeks of pregnancy. The Medical Termination of Pregnancy (MTP) Amendment Act, 2021, increased the time within which a woman can undergo an abortion and also regulated the conditions under which the surgical procedure could be carried out. While the MTP Act, 1971 required the opinion of one doctor if the abortion was done within 12 weeks of pregnancy and two doctors for abortion within 12-20 weeks, the amended bill allows advice of one doctor if abortion is done within 20 weeks of pregnancy and advice of two doctors in certain cases between 20-24 weeks of pregnancy.

Section 3 of the said Act, says that pregnancy can be terminated:

- (1) As a health measure when there is danger to the life or risk to physical or mental health of the women;
- (2) On humanitarian grounds - such as when pregnancy arises from a sex crime like rape or intercourse with a lunatic woman, etc. and

²¹Supranote 4.

²² Ibid

(3) Eugenic grounds - where there is a substantial risk that the child, if born, would suffer from deformities and diseases.

“3-B. Women eligible for termination of pregnancy up to twenty-four weeks. –

The following categories of women shall be considered eligible for termination of pregnancy under clause (b) of sub-section (2) section 3 of the Act, for a period of up to twenty-four weeks, namely: –

(a) survivors of sexual assault or rape or incest;

(b) minors;

(c) change of marital status during the ongoing pregnancy (widowhood and divorce);

(d) women with physical disabilities [major disability as per criteria laid down under the Rights of Persons with Disabilities Act, 2016];

(e) mentally ill women including mental retardation;

(f) the foetal malformation that has substantial risk of being incompatible with life or if the child is born it may suffer from such physical or mental abnormalities to be seriously handicapped; and

(g) Women with pregnancy in humanitarian settings or disaster or emergency situations as may be declared by the Government.”

A woman's right in this respect is doubtful because her right is dependent on certain conditions: proof of risk to her life or grave injury to her physical or mental health, substantial risk of physical or mental abnormalities to the child if born and a situation where abortion could only save her life, all to be arrived at by the medical practitioners. Can a woman request a medical practitioner to perform an abortion on the ground that she does not want a child at that time? Where the liberty of the woman is fully dependent on certain other factors, such a request cannot be said to be just and reasonable. The M.T.P. Act also does not classify the pregnancy period so that the woman's interests and the state's interests could be given predominance in one's own spheres.

It is submitted that a decision as to abortion may be entirely left with woman provided, she is sane and attained majority. Only in cases where an abortion may affect her life, her freedom may be curtailed. All other restrictions on the right to abortion are unwelcome. True, a woman's decision as to abortion may depend upon her physical and mental health or the potential threat to the health of the child. Apart from these reasons, there are also various important factors. She or the family may not be financially sound to welcome an addition. It may be a time when she wants to change her profession, which requires free time and hard work. Her relationship with the husband may virtually be on the verge of collapse and she may prefer not to have a child from him, for it may possibly affect a future marriage. All these factors are quite relevant and the Indian statute on abortion does not pay any respect to them. The law thus is unreasonable and could well be found to be violative of the principles of equality provided under Article 14 of the Constitution. Is it desirable to pay compensation to woman for all her physical and mental inconveniences and liabilities, which arises in that context? Finally, it may be noted that the M.T.P. Act does not protect the unborn child. Any indirect protection it gains under the Act is only a by-product resulting from the protection of the woman. The rights provided as well as the restrictions imposed under the statute show that the very purpose of the state is to protect a living woman from dangers which may arise during an abortion process. It is the protection to the mother that protects the unborn.

Right To Abortion Of The Mother Vs Right To Life Of The Unborn

Religious, moral, and cultural sensibilities continue to influence abortion laws throughout the world. The right to life, the right to liberty, and the right to security of person are major issues of human rights that are sometimes used as justification for the existence or the absence of laws controlling abortion. Many countries in which abortion is legal require that certain criteria be met in order for an abortion to be obtained, often, but not always, using a trimester-based system to regulate the window in which abortion is still legal to perform. In this debate, arguments presented in favor of or against abortion focus on either the moral permissibility of an induced abortion, or justification of laws permitting or restricting abortion. Arguments on morality and legality tend to collide and combine, complicating the issue at hand. Abortion debates, especially pertaining to abortion laws, are often spearheaded by advocacy groups belonging to one of two camps. Most often those in favor of legal prohibition of abortion describe themselves as pro-life while those against legal restrictions on abortion describe themselves as pro-choice. Both are

used to indicate the central principles in arguments for and against abortion: "Is the fetus a human being with a fundamental right to life" for pro-life advocates, and, for those who are pro-choice, "Does a woman have the right to choose whether or not to have an abortion"

INTERNATIONAL PERSPECTIVE

International Instruments under Article 1 of the American Declaration of Rights and Duties of Man and the Inter American Commission of Human Rights say that abortion is legalized until the end of First trimester Right to life is protected from the moment of its conception by Articles 6(1) of the ICCPR, Article 2 of the European Convention of Human Rights and Article 4 of the African Charter of Human Human and People's right. But they are silent on the issue of when does life begin. But the interpretations have forced us to believe that the child is not to be protected from the time of its inception. The right to life of the fetus has to be balanced with the rights of the mother.

International courts and tribunals have not addressed the difficult philosophical issue of when life begins, but have focused on the meaning of the language used in the relevant treaties. They have generally held that the references to every human being or everyone or every person do not include an unborn foetus.

The right of a woman to her private life has been the basis on which a number of international bodies have upheld the right of a woman to have an abortion. The right to freedom of expression and access to information has been used to argue for the right of women to receive information about abortion options. The right to access abortion may also be based on the right of a woman to decide freely and responsibly on the number and spacing of her children.

In a January 2006 CBS News poll in US, which asked, "What is your personal feeling about abortion", 27% said that abortion should be "permitted in all cases," 15% that it should be "permitted, but subject to greater restrictions than it is now," 33% said that it should be "permitted only in cases such as rape, incest or to save the woman's life," 17% said that it should "only be permitted to save the woman's life," and 5% said that it should "never" be permitted. An April 2006 Harris poll on **Roe v. Wade**, asked, "Do you favor or oppose the part of **Roe v. Wade** that made abortions up to three months of pregnancy legal", to which 49% of respondents indicated favor.

In the Supreme Court of Canada, interpreting Article 7 of the Canadian Charter which guarantees an individual's right to life, liberty and freedom and security of a person. In the leading case of Morgentalor Smoling and Scott vs. R (1988) 44 DLR (4th) 385, the Court focused on the bodily security of the pregnant women. The Criminal Code of the country required a pregnant woman who wanted an abortion to submit an application to a therapeutic committee, which resulted in delays. The Supreme Court found that this procedure infringed the guarantee of security of a person. This subjected the pregnant woman to psychological stress.

Also, the Abortion Act, 1967 of the UK in its Article 2 does not confer an absolute right to life to the unborn. It was held in Paton Vs. United Kingdom (1980) 3 EHRR 408. Abortion is permitted if the continuance of the pregnancy involves risk. The right to life of fetus is subject to an implied limitation allowing pregnancy to be terminated in order to protect the life of a mother. The same was upheld in H Vs. Norway (1992) 73 DR 155).

Also, it is was also held in 1992 by the Supreme Court that a woman has the same exclusive right to abortion as to any to any other medical treatment. The prospective fathers have no right to be consulted for the same.

JUDICIAL RESPONSE ON ABORTIONS

The Delhi High Court in its decision of the division bench comprising of Justices Sathish Chandra Sharma, CJ and Subramonium Prasad, J refused termination of pregnancy to an unmarried woman whose pregnancy arose out of a consensual relationship after holding that her case was clearly not covered by any of the categories mentioned under Rule 3B of the Medical Termination of Pregnancy Rules, 2003 as on the date of the judgment. The Supreme Court on it noteworthy mention was made by the counsel for petitioners regarding non-inclusion of unmarried women under Rule 3B of the Medical Termination of Pregnancy Rules, 2003 being violative of Article 14 of the Constitution of India. The Court, however, observed that whether such rule is valid or not can be decided only after the said rule is held ultra vires, for which purpose, notice has to be issued in the writ petition and has been done so by the Supreme Court. Noting that granting interim relief to the petitioner now would amount to allowing the writ petition itself, the Court held that in light of the law prevailing on the date of the passing of the order, Rule 3B Medical Termination of Pregnancy Rules, 2003, stands, and thus “this Court,

while exercising its power under Article 226 of the Constitution of India, 1950, cannot go beyond the Statute²³.”

D. Rajeswari vs State Of Tamil Nadu And Others

The case, is of an unmarried girl of 18 years who is praying for issue of a direction to terminate the pregnancy of the child in her womb, on the ground that bearing the unwanted pregnancy of the child of three months made her to become mentally ill and the continuance of pregnancy has caused great anguish in her mind, which would result in a grave injury to her mental health, since the pregnancy was caused by rape. The Court granted the permission to terminate the pregnancy.

Dr. Nisha Malviya and Anr. Vs. State of M.P:

The accused had committed rape on minor girl aged about 12 years and made her pregnant. The allegations are that two other co-accused took this girl, and they terminated her pregnancy. So the charge on them is firstly causing miscarriage without consent of girl. The Court held all the three accused guilty of termination of pregnancy which was not consented by the mother or the girl.

Murari Mohan Koley vs The State 2003

In this case, a woman wanted to have abortion on the ground that she has a 6 months old daughter. She approached the petitioner for an abortion. And the petitioner agreed to it for a consideration. But somehow the condition of the woman worsened in the hospital and she was shifted to another hospital. But it resulted in her death. The abortion was not done.

The petitioner who was a registered medical practitioner had to establish that his action was done in good faith (includes omission as well) so that he can get exemption from any criminal liability under section 3 of the MTP Act, 1971.

Shri BhagwanKatariva And Others vs State of M.P: Abortion without mothers consent 2000. The woman was married to Navneet. Applicants are younger brothers of said Navneet while BhagwanKatariva was the father of said Navneet. After the complainant conceived pregnancy, the husband and the other family members took an exception to it, took her for

²³ X v. Principal Secretary, [2022 SCC OnLine Del 2171](#), decided on 15-07-2022

abortion and without her consent got the abortion done.

The Court opined that if we refer Section 3 of the Medical Termination of Pregnancy Act, 1971, a doctor is entitled to terminate the pregnancy under particular circumstances and if the pregnancy was terminated in accordance with the provisions of law, it must be presumed that without the consent of the woman it could not be done. Present is a case where a permanent scar has been carved on the heart and soul of the woman by depriving her of her child. And the Doctor will be liable.

Thus, the case laws show that a woman has an absolute right to abortion and no one can take away this right from her. The Judiciary has been playing a vital role in securing these rights to women. Right to abortion is a fundamental right of privacy under Art 21 of The Constitution of India.

CONCLUSIONS

The observations were made by the Supreme Court as it heard a petition from a 25-year-old woman challenging the lower 20-week restriction under the Medical Termination of Pregnancy (MTP) Act, 1971, which is applicable to single women who want to abort a pregnancy after being dumped by their boyfriend. When a live-in relationship ends, a woman should have the same options for terminating an unplanned pregnancy as widowed or divorced women. The Supreme Court bench comprising of Justices Dhananjaya Y Chandrachud, AS Bopanna and JB Pardiwala mentioned that "We can interpret Rule 3B(c) of MTP Act 1971 in such a manner that the change of marital status should be a broad category which would include a married woman who has been abandoned and an unmarried woman who has been abandoned and an unmarried woman who has suffered abandonment²⁴." The court ordered interpreting the law to include "unmarried" or "single" woman in the sections in question of MTP Act 1971. The specific gap was in Rule 3B(c) of the MTP Rules, 2003 that allows women who undergo change of marital status during the pregnancy either by way of widowhood or divorce to undergo termination of

²⁴ <https://www.livelaw.in/top-stories/supreme-court-explores-ways-to-interpret-mtp-rules-to-recognize-unmarried-womans-right-to-abortion-207301>

pregnancy upto 24 weeks. Extending the same logic of married women the bench noted a married upon being deserted with no source of livelihood, such woman can't have the right to abort her pregnancy. As an ardent defender, the law must protect the right to abortion. "It becomes more vulnerable for an unmarried woman to survive after desertion as a woman who is married falls back on families but in a live-in relationship, not every time the family is supportive of the woman's decision," said ASG Aishwarya Bhati, who assisted the court. ASG Bhati informed the court that Parliament made this distinction consciously in light of the prevalent social evils of sex determination and female foeticide. It may also be incompatible with the Pre-Conception and Pre-Natal Diagnostic Techniques (PC-PNDT) Act of 1994, which seeks to limit sex determination.

IJSER